

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION

JAMES PRUITT

PLAINTIFF

V.

CIVIL ACTION NO.1:13CV96-GHD-DAS

BENJAMIN BLOSSOM, et al.

DEFENDANTS

REPORT AND RECOMMENDATION

The undersigned recommends, *sua sponte*, that the court dismiss this action without prejudice. On June 11, 2013, the court ordered the plaintiff to show cause why the action should not be dismissed for failure to state a claim or for failure to show subject matter jurisdiction in this court. The plaintiff filed his response to the order and provided additional information concerning some of the proposed defendants and provided the addresses for each as required by the show cause order. The plaintiff's response establishes that the plaintiff and all of the defendants are citizens of the State of Mississippi in this medical negligence action. Because a claim for medical malpractice is a tort action based on state law, jurisdiction in this court would be limited to cases involving complete diversity of citizenship, that is involving citizens of different states. 28 U.S.C. § 1332. It, therefore, appears that this court does not have subject matter jurisdiction and that this matter must be dismissed.

The parties are referred to 28 U.S.C. § 636(b)(1) and Local Rule 72(a)(3) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections must be in writing and must be filed within fourteen days of this date. Failure to timely file objections to the proposed findings and recommendations will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions that are accepted by the district court. *Douglass v. United Services Automobile*

*Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within fourteen days of this date. Petitioner is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

SO ORDERED this the 24<sup>th</sup> day of June, 2013.

/s/ David A. Sanders  
UNITED STATES MAGISTRATE JUDGE